

(r) Fails to maintain communication with the client throughout the duration of the client-practitioner relationship. It is the obligation of the practitioner to take reasonable steps to communicate with the client in a language that the client understands. A practitioner is only under the obligation to attempt to communicate with his or her client using addresses or phone numbers known to the practitioner. In order to properly maintain communication, the practitioner should:

(1) Promptly inform and consult with the client concerning any decision or circumstance with respect to which the client's informed consent is reasonably required;

(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished. Reasonable consultation with the client includes the duty to meet with the client sufficiently in advance of a hearing or other matter to ensure adequate preparation of the client's case and compliance with applicable deadlines;

(3) Keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation; and

(4) Promptly comply with reasonable requests for information, except that when a prompt *response* is not feasible, the practitioner, or a member of the practitioner's staff, should acknowledge receipt of the request and advise the client when a *response* may be expected;

(s) Fails to disclose to the adjudicator legal authority in the controlling jurisdiction known to the practitioner to be directly adverse to the position of the client and not disclosed by opposing counsel;

(t) Fails to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative in compliance with applicable rules and regulations when the practitioner:

(1) Has engaged in *practice* or *preparation* as those terms are defined in §§1001.1(i) and (k), and

(2) Has been deemed to have engaged in a pattern or practice of failing to submit such forms, in compliance with applicable rules and regulations. Notwithstanding the foregoing, in each

case where the respondent is represented, every pleading, application, motion, or other filing shall be signed by the practitioner of record in his or her individual name; or

(u) Repeatedly files notices, motions, briefs, or claims that reflect little or no attention to the specific factual or legal issues applicable to a client's case, but rather rely on boilerplate language indicative of a substantial failure to competently and diligently represent the client.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76923, Dec. 18, 2008]

§ 1003.103 Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify EOIR of conviction or discipline.

(a) *Immediate Suspension—*

(1) *Petition.* The EOIR disciplinary counsel shall file a petition with the Board to suspend immediately from practice before the Board and the Immigration Courts any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in §1003.102(h), or any practitioner who has been suspended or disbarred by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal court, or who has been placed on an interim suspension pending a final resolution of the underlying disciplinary matter.

(2) *DHS petition.* DHS may file a petition with the Board to suspend immediately from practice before DHS any practitioner described in paragraph (a)(1) of this section. See 8 CFR 292.3(c).

(3) *Copy of petition.* A copy of a petition filed by the EOIR disciplinary counsel shall be forwarded to DHS, which may submit a written request to the Board that entry of any order immediately suspending a practitioner before the Board or the Immigration Courts also apply to the practitioner's authority to practice before DHS. A copy of a petition filed by DHS shall be forwarded to the EOIR disciplinary counsel, who may submit a written request to the Board that entry of any

order immediately suspending a practitioner before DHS also apply to the practitioner's authority to practice before the Board and Immigration Courts. Proof of service on the practitioner of any request to broaden the scope of an immediate suspension or proposed discipline must be filed with the Board or the adjudicating official.

(4) *Immediate suspension.* Upon the filing of a petition for immediate suspension pursuant to §§1003.103(a)(1) or 1003.103(a)(2), together with a certified copy of a court record finding that a practitioner has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, or has been disciplined or has resigned, as described in paragraph (a)(1) of this section, the Board shall forthwith enter an order immediately suspending the practitioner from practice before the Board, the Immigration Courts, and/or DHS, notwithstanding the pendency of an appeal, if any, of the underlying disciplinary proceeding, pending final disposition of a summary disciplinary proceeding as provided in paragraph (b) of this section. Such immediate suspension will continue until imposition of a final administrative decision. If an immediate suspension is imposed upon a practitioner, the Board may require that notice of such suspension be posted at the Board, the Immigration Courts, or DHS. Upon good cause shown, the Board may set aside such order of immediate suspension when it appears in the interest of justice to do so. If a final administrative decision includes the imposition of a period of suspension, time spent by the practitioner under immediate suspension pursuant to this paragraph may be credited toward the period of suspension imposed under the final administrative decision.

(b) *Summary disciplinary proceedings.* The EOIR disciplinary counsel (or DHS pursuant to 8 CFR 292.3(c)(3)) shall promptly initiate summary disciplinary proceedings against any practitioner described in paragraph (a) of this section by the issuance of a Notice of Intent to Discipline, upon receipt of a certified copy of the order, judgment, or record evidencing the underlying criminal conviction, discipline, or resignation, and accompanied by a cer-

tified copy of such document. However, delays in initiation of summary disciplinary proceedings under this section will not impact an immediate suspension imposed pursuant to paragraph (a) of this section. Summary proceedings shall be conducted in accordance with the provisions set forth in §§1003.105 and 1003.106. Any such summary proceeding shall not be concluded until all direct appeals from an underlying criminal conviction shall have been completed.

(1) In matters concerning criminal convictions, a certified copy of the court record, docket entry, or plea shall be conclusive evidence of the commission of the crime in any summary disciplinary proceeding based thereon.

(2) In the case of a summary proceeding based upon a final order of disbarment or suspension, or a resignation while a disciplinary investigation or proceeding is pending (*i.e.*, reciprocal discipline), a certified copy of a judgment or order of discipline shall establish a rebuttable presumption of the professional misconduct. Disciplinary sanctions shall follow in such a proceeding unless the attorney can rebut the presumption by demonstrating clear and convincing evidence that:

(i) The underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) There was such an infirmity of proof establishing the attorney's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or

(iii) The imposition of discipline by the adjudicating official would result in grave injustice.

(c) *Duty of practitioner to notify EOIR of conviction or discipline.* Any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in §1003.102(h), or who has been disbarred or suspended by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory, or Commonwealth of the United States, or the

District of Columbia, or any Federal court, must notify the EOIR disciplinary counsel of any such conviction or disciplinary action within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending. Failure to do so may result in immediate suspension as set forth in paragraph (a) of this section and other final discipline. This duty to notify applies only to convictions for serious crimes and to orders imposing discipline for professional misconduct entered on or after August 28, 2000.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76923, Dec. 18, 2008; 77 FR 2014, Jan. 13, 2012]

§ 1003.104 Filing of complaints; preliminary inquiries; resolutions; referral of complaints.

(a) *Filing complaints*—(1) *Practitioners authorized to practice before the Board and the Immigration Courts.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Board and the Immigration Courts shall be filed with the EOIR disciplinary counsel. Disciplinary complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. Any individual may file a complaint with the EOIR disciplinary counsel using the Form EOIR-44. The EOIR disciplinary counsel shall notify DHS of any disciplinary complaint that pertains, in whole or part, to a matter before DHS.

(2) *Practitioners authorized to practice before DHS.* Complaints of criminal, unethical, or unprofessional conduct, or frivolous behavior by a practitioner who is authorized to practice before DHS shall be filed with DHS pursuant to the procedures set forth in § 292.3(d) of this chapter.

(b) *Preliminary inquiry.* Upon receipt of a disciplinary complaint or on its own initiative, the EOIR disciplinary

counsel will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, to the extent necessary to conduct a preliminary inquiry and any subsequent proceedings based thereon. If the EOIR disciplinary counsel determines that a complaint is without merit, no further action will be taken. The EOIR disciplinary counsel may, in its discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of any such determination in writing.

(c) *Resolution reached prior to the issuance of a Notice of Intent to Discipline.* The EOIR disciplinary counsel, in its discretion, may issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(d) *Referral of complaints of criminal conduct.* If the EOIR disciplinary counsel receives credible information or allegations that a practitioner has engaged in criminal conduct, the EOIR disciplinary counsel shall refer the matter to DHS or the appropriate United States Attorney and, if appropriate, to the Inspector General, the Federal Bureau of Investigation, or other law enforcement agency. In such cases, in making the decision to pursue disciplinary sanctions, the EOIR disciplinary counsel shall coordinate in advance with the appropriate investigative and prosecutorial authorities within the Department to ensure that neither the disciplinary process nor criminal prosecutions are jeopardized.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76924, Dec. 18, 2008]

§ 1003.105 Notice of Intent to Discipline.

(a) *Issuance of Notice to practitioner.* (1) If, upon completion of the preliminary inquiry, the EOIR disciplinary counsel determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in § 1003.102, he or she will file with the